

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**(Attorney Docket № 14794US02)**

In the Application of:

Jeyhan Karaoguz, et al.	)	Electronically Filed on: July 28, 2009
Serial No. 10/675,287	)	
Filed: September 30, 2003	)	
For: METHOD AND SYSTEM FOR A MEDIA	)	
EXCHANGE NETWORK SUPPORTING	)	
TRANSPARENT PC-TO-PC MEDIA	)	
INTERCHANGE INTERFACE	)	
Examiner: Patrick A. Ryan	)	
Group Art Unit: 2427	)	
Confirmation No. 5434	)	

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

The Applicant requests review of the final rejection in the above-identified application, stated in the final Office Action mailed on 05/05/2009 ("Final Office Action") with a period of reply through 08/05/2009. The Applicant also requests review of the arguments stated on page 2 of the Advisory Office Action mailed on 07/16/2009 ("Advisory Office Action"). No amendments are being filed with this request.

This request is being filed with a Notice of Appeal. The review is being requested for the reasons stated on the attached sheets.

## REMARKS

The present application includes pending claims 1-31, all of which have been rejected. The Applicant respectfully submits that the claims define patentable subject matter.

Claims 1-5, 8-15, 18-25, and 28-31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over USPP 2002/0104099 ("Novak") in view of USPP 2002/0054752 ("Wood"). Claims 6, 7, 16, 17, 26, and 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Novak and Wood, in view of U.S. Patent No. 7,174,512 ("Martin"). The Applicant respectfully traverses these rejections at least based on the following remarks.

### I. Examiner's Response to Arguments

#### A. Section 6 (page 6) of the Final Office Action

With regard to the "transparently transferring" limitation, the Examiner states the following in page 6 of the Final Office Action:

Applicant also presents that Novak does not teach "transparently transferring from said first location, at least a portion of said organized channels to at least a second location within the communication network" because "at step 406, a token or electronic file is sent to the end user to subscribe the end user's terminal (set top box 152) to the synthetic channel". Applicant cites Novak Paragraph [0058] "discloses that the individual (who uploads the media to server or web site 124) emails the token or other electronic file to the end user" and states that "Obviously, the user will be aware of such emailed token" (Reply Pages 19-20). The Examiner respectfully disagrees.

*The Examiner first notes the Applicant has not provided evidence to support a statement of obviousness regarding the user being aware of an emailed token.*

...

*Additionally, the Examiner has also cited Novak's teachings of a Java applet that is automatically downloaded and triggers an update of EPG 153 (as described in Paragraph [0080]) to address the claimed "transparently transferring" limitation.*

The Applicant respectfully disagrees, especially with the above emphasized portions of the argument. The Examiner alleges that the Applicant "has not provided evidence to

support a statement of obviousness regarding the user being aware of an emailed token." In response, the Examiner is referred to paragraph 0080 of Novak, where it is disclosed that the token is emailed to the end user as an attachment. **Obviously, an email attachment cannot open/launch by itself, and it has to be opened/launched by the email recipient so that the synthetic channel can be included in the EPG 153. Paragraph 0080 further states that the subscription token updates the EPG when the token attachment is installed or launched. Therefore, the user has to be aware of the emailed token since the token is emailed as an attachment, which has to be opened by the user in order to be installed and the synthetic channel to be added to the user's EPG 153.**

The Examiner also cites Novak's teaching of a Java applet and alleged automatic download of the applet. Even though Novak discloses that a Java applet or Javascript is automatically downloaded, the Examiner has not mentioned how that automatic download takes place. More specifically, **the end user has to navigate to the web site 124, and upon reaching the web site 124, the automatic applet download takes place, as a result of which, the synthetic channel is added to the user's EPG 153. In this regard, similarly to the previous example of the token emailed as attachment, in this instance a specific action by the end user is also required so that the applet download can take place and the synthetic channel can be added to the user's EPG 153.** Therefore, the Applicant maintains that in both of the above examples given by the Examiner, there is no transparent transferring, as alleged by the Examiner.

#### **B. Examiner's Arguments in the Advisory Office Action**

In response to the above argument, the Examiner states the following in page 2 of the Advisory Office Action:

The Examiner submits that Applicant's claim is directed toward "transferring" and not receiving or opening or launching in a "transparent" fashion. It is the Examiner's position that, for example, an emailed token is a "transparent" transfer of information because the end user would not know exactly how or when the information is transmitted and would only be aware of the reception of this information. In addition, it is the

Examiner's position that the act of opening or launching an application from an email attachment is independent of an act of transmitting the email attachment. Therefore, the Examiner maintains that the combination of Novak and Wood teach "transparently transferring" information by way of either an emailed token or automatically downloaded Java script application (as described by Novak in Paragraph [0080]).

The Examiner is reminded that the relevant claim limitation from Applicant's claim 1 is *"transparently transferring ... organized channels to at least a second geographic location..."* The Examiner has equated this aspect of Applicant's claim to Novak's adding of the synthetic channel to the user's EPG 153 via the emailed token or the Java applet. **The Applicant points out that simply transferring/emailing the token will not add the synthetic channel to the user's EPG 153. The user has to purposefully open/launch the attachment so that Novak's synthetic channel can be added to the user's EPG 153 (this is the reason why the Applicant discussed the deficiencies of Novak with regard to opening/launching the email attachment; see section A above). Novak only transfers a token, and it does not disclose any transparent transfer of channels or media. Therefore, even though such transfer of the token via email may have been "transparent" to the user, such determination is irrelevant since the user EPG is updated with the synthetic channel only after the attachment is opened/launched by the user. As already explained, the opening/launching of the email attachment does not make the channel/media transfer transparent since the user becomes aware of the pending channel update prior to opening the attachment.**

**The Applicant maintains all arguments stated in pages 10-19 of the 07/06/2009 response.**

In general, the Final Office Action makes various statements regarding claims 1-31 and the cited reference that are now moot in light of the above. Thus, the Applicant will not address such statements at the present time. However, the Applicant expressly reserves the right to challenge such statements in the future should the need

arise (e.g., if such statement should become relevant by appearing in a rejection of any current or future claim).

## **II. Conclusion**

The Applicant respectfully submits that claims 1-31 of the present application should be in condition for allowance at least for the reasons discussed above and request that the outstanding rejections be reconsidered and withdrawn. The Commissioner is authorized to charge any necessary fees or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

Respectfully submitted,

Date: July 28, 2009

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